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Practitioner's Docket No. 881.008US1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Michael J. Renn, et al.

Application No.: 09 / 408,621 Group No.: 2877  
Filed: September 30, 1999 Examiner: UNKNOWN  
For: LASER-GUIDED MANIPULATION OF NON-ATOMIC PARTICLES

Box DAC  
Assistant Commissioner for Patents  
Washington, D.C. 20231  
ATTENTION: Petition Information  
Crystal Park One, Suite 520  
(M.P.E.P. § 1002.02(b), 7th ed.)

PETITION FOR REVIVAL OF AN APPLICATION  
FOR PATENT ABANDONED UNINTENTIONALLY UNDER  
37 C.F.R. § 1.137(b)

NOTE: "In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, any petition to revive pursuant to this section must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought. The provisions of this paragraph do not apply to lapsed patents." 37 C.F.R. § 1.137(c).

NOTE: In accordance with the Notice of November 5, 1990 (1121 O.G. 6), an application abandoned under 37 C.F.R. § 1.53(d) for failure to timely provide the appropriate filing fee, oath or declaration and/or surcharge may be revived under the procedure of 37 C.F.R. § 1.137(b).

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***  
(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

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I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☒ deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231

37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10 \*

☐ with sufficient postage as first class mail.

☒ as "Express Mail Post Office to Addressee"

Mailing Label No. EV085862998US (mandatory)

TRANSMISSION

☐ facsimile transmitted to the Patent and Trademark Office, (703) \_\_\_\_\_

Diane S. Nelson  
Signature

Date: July 31, 2002

Diane S. Nelson, Paralegal  
(type or print name of person certifying)

\* Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

(Petition for Revival of Unintentionally Abandoned Application [11-3]—page 1 of 3)

1. This application became abandoned on December 21, 1999

**NOTE:** Extensions under 37 C.F.R. § 1.136 are available only if asked for "prior to or with the response." Accordingly, if the question of abandonment arises when the provisions of § 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. Thus: An application which is abandoned for failure to respond within a set period with no extension fee having been paid, would not require the payment of extension fees as a condition for revival. M.P.E.P. § 711.03(c), 6th ed., rev. 2.

2. This application became abandoned because the failure to prosecute was an unintentional delay. The entire delay in filing the required reply from the due date until the filing of this petition was unintentional 37 C.F.R. § 1.137(b)(3).

3. Response or action required

☐ has been filed.

☒ is attached.

(complete the following, if applicable)

**NOTE:** The PTO accepts the filing of a continuing application as a response under 37 C.F.R. 1.137. To facilitate processing in such a case, the petition to revive should specifically refer to the filing of a continuing application and also include an express abandonment of the prior application conditioned upon the granting of the petition and the granting of a filing date to the continuing application. Notice of May 13, 1983, (1031 O.G. 11-12). See also M.P.E.P. § 711.03(c), 6th ed., rev. 2. "In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof." 37 C.F.R. § 1.137(b)(1).

☒ The response includes the filing of a continuation application, having an express abandonment occur as of the filing date of U.S. Patent Application Serial No. 09/574,955, namely May 19, 2000.

4. Fee (37 C.F.R. 1.17(m))

Application status is:

☒ Small business entity—fee \$640.00

☐ A statement is attached.

☒ A statement was filed.

☐ Other than small entity—fee \$1,280.00

5. Payment of fee

☐ Authorization is hereby made to charge the amount of

☐ \$620.00. ☐ \$1,240.00.

☐ to Deposit Account No. \_\_\_\_\_

☐ to Credit Card as shown on the attached credit information authorization form PTO-2038.

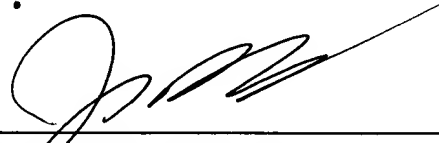
A duplicate of this petition is attached.

**WARNING:** Credit card information should not be included on this form as it may become public.

(complete the following, if applicable)

- ☒ Because this petition is more than 3 months after the date the Office first notified the applicant that the application is abandoned, applicant additionally submits a showing as to how the delay between the date the applicant was first notified that the application is abandoned and the filing of this petition under 37 C.F.R. § 1.134(b) was unintentional. 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).
- ☒ Because this petition is more than 1 year after the date of abandonment of the application, applicant additionally submits further information as to when applicant (or applicant's representative) first became aware of the abandonment of the application, and a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). 62 Fed. Reg. 53,131, 53,159 (Oct. 10, 1997).

Date: July 31, 2002



Signature of person making statement  
that abandonment was due to an unintentional delay

Jeffrey D. Myers

(type or print name of person making statement)

PEACOCK, MYERS & ADAMS, P.C.

P.O. Box 26927

Residence of person making statement

Albuquerque, New Mexico 87125-6927

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SIGNATURE OF PRACTITIONER

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(type or print name of practitioner)

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AUG 05 2002  
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**STATEMENT UNDER 37 C.F.R. § 1.134(B)**

I am Jeffrey D. Myers, Registered Patent Attorney No. 35,964, in whom the Power of Attorney of U.S. Patent Application Serial No. 09/408,621 (the instant application) has been placed.

The attorney of record at the time of the statutory deadline of May 21, 2000, for filing a Response to the Notice to File Missing Parts in the instant application, Schwegman Lundberg Woessner & Kluth, P.A., filed a continuation application claiming priority to the instant application, U.S. Patent Application Serial No. 09/574,955, on May 19, 2000. However, they inadvertently overlooked the requirement to complete the Missing Parts Requirement and pay the necessary extension fees at the same time to keep the instant application alive, thereby preserving the priority claim to the present application by the continuation application.

Applicants transferred the instant application from Schwegman Lundberg Woessner & Kluth, P.A. to Michael Best & Friedrich, L.L.P., in June, 2000. The file for U.S. Continuation Application Serial No. 09/574,955 was transferred to Michael Best & Friedrich, L.L.P. at the same time. In October, 2000, Schwegman Lundberg Woessner & Kluth, P.A. forwarded the Notice of Abandonment dated September 26, 2000, to Michael Best & Friedrich, L.L.P. In the confusion of a transfer of numerous other matters from the same Applicant at the same time, the requirement to keep the instant application alive in order to preserve the priority claim by the continuation application was likewise inadvertently overlooked by Michael Best & Friedrich, L.L.P.

On September 20, 2001, Applicants transferred the instant application to Thomas Giaccherini. On December 19, 2001, a first Office Action was mailed to Schwegman Lundberg, et al. (still attorney of record according to the Patent Office) for U.S. Continuation Application Serial No. 09/574,955, in which the Examiner objected to the priority claim, noting that an application had to be co-pending with the prior application. Schwegman Lundberg, et al. forwarded the Office Action to Michael Best & Friedrich on January 16, 2002, and then Michael Best & Friedrich forwarded it to Thomas Giaccherini on January 22, 2002. Again, despite the Examiner's objection to the priority claim of the continuation application, the requirement to keep the instant application alive was not appreciated.

On May 24, 2002, this application was transferred to me. I filed an Amendment in continuation application U.S. Serial No. 09/574,955 on May 31, 2002, amending the form of the priority claim to address the Examiner's objection to the priority claim of Serial No. 09/574,955 before I discovered that the objection had to do with the lack of co-pendency of the instant application with Serial No. 09/574,955, since the instant application was allowed to abandon. On June 7, 2002, I notified the Applicants of the oversight and the need to file a petition for revival. On June 9, 2002, Applicants advised me to proceed with the petition, as they did not wish the instant application to abandon in order to preserve the priority claim in the continuation application Serial No. 09/574,955. This has resulted in the preparation of a petition to revive the U.S. Patent Application Serial No. 09/408,621, to which petition this statement is attached.